



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7831-99

10 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 28 December 1973 for four years at age 18. The record reflects that you were advanced to PFC (E-2) and served for only five months without incident. During the eight month period from May 1974 to 23 January 1975 you received three nonjudicial punishments (NJP) for five periods of unauthorized absence (UA) totalling about 39 days.

The record further reflects UAs from 5 February to 22 March and 1 May to 9 October 1975. During the latter UA, you were apprehended by civil authorities on a charge of burglary and were convicted in accordance with your plea of guilty on 24 September 1975. You were sentenced to three years of probation with the first six months to be served in the county jail. However, the sentence was withheld until 25 November 1975 when the court ordered that you be delivered to civil authorities. However, you were reported UA again on 16 October 1975. When this UA terminated is not shown in available records

On 5 March 1976 you were notified that you were being processed for an undesirable discharge by reason of misconduct due to civil conviction. You were advised of your procedural rights and declined to consult with counsel. An ADB convened on 18 March 1976. You were not present nor represented by counsel since you waived all of your rights except the right to have your case reviewed by an ADB. The ADB recommended that you be separated with an undesirable discharge by reason of misconduct due to civil conviction. A staff judge advocate reviewed the proceedings and found them to be sufficient in law and fact. On 29 March 1976, the discharge authority directed an undesirable discharge by reason of misconduct. You were so discharged on 12 April 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been nearly 24 years since you were discharged. The Board noted your contentions to the effect that your superiors misled you into signing papers for discharge and your UAs were the result of marital problems. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs, a civil conviction for burglary, and the total period of UA of more than nine months. The Board is sympathetic to young Marines who have marital problems but you provide no probative evidence to justify or mitigate the several prolonged periods of UA. Further, marital problems did not cause the felony conviction by civil authorities. The Board concluded that you were guilty of too much misconduct to warrant recharacterization to honorable or under honorable conditions. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director